U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

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DEC 8 2000

File: EAC-00-019-50609 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a circus. It filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(P)(i). The petitioner seeks to employ the beneficiary temporarily in the United States as a personal assistant for one of its performers for a period of approximately 25 months. The director found that the beneficiary is ineligible for P-1 classification because the performer from whom the beneficiary would derive status is not an alien in P-1 status, and is in fact a United States citizen.

On appeal, counsel argued that the beneficiary would provide services for all three members of a circus clown act, the other two of whom are aliens in P-1 classification.

Section 214(c)(4)(B)(i) of the Act, 8 U.S.C. 1184(c)(4)(A), provides, in pertinent part, that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time...

8 C.F.R. 214.2(p)(4)(iv) provides for P-1 classification of an alien as an essential support alien who:

> (A) *General.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.

8 C.F.R. 214.2(p)(3) states in pertinent part:

> *Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien.

The petition was filed to accord P-1 classification to the beneficiary as a personal assistant to a circus performer, in this

case an acrobatic clown. It was stated that the clown in question is a dwarf who is a national of Hungary and requires a personal assistant because of the logistic difficulties inherent in dwarfism and for language compatibility.

The director denied the petition noting that the clown in question, one [redacted] is a naturalized United States citizen, not a P-1 alien, thereby rendering the beneficiary ineligible for derivative status.

Counsel did not dispute the director's finding of fact in the decision. Rather, counsel argued on appeal that the beneficiary would actually serve as a personal assistant to [redacted] entire three-man act and that the remaining two members of the act are aliens in P-1 classification. Counsel requested approval of the petition on this basis.

On review, it is concluded that counsel's argument represents a material change to the petition. It is now claimed that the beneficiary would serve as a personal assistant to all three performers of the circus act, rather than one as originally claimed. The director was unable to consider these circumstances in his decision.

It is noted that there is no documentation of any physical or linguistic limitations of the other two performers in the act requiring the services of a personal assistant. In addition, the labor consultation only considered the employment of a personal assistant for [redacted] not for a three-man act. Administrative notice is further made that it is not clear that the duties of a personal assistant in this matter rise to the level of a highly skilled, essential person who is integral to the performance of a P-1.

Pursuant to 8 C.F.R. 214.2(p)(2)(iv)(D), a petitioner must file an amended petition to reflect any material changes in the terms and conditions of employment of the beneficiary. See also Matter of Izumii, I.D. 3360 (Assoc. Comm., Ex., July 13, 1998). Accordingly, the petitioner must filed an amended petition to pursue this matter.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.